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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,534	05/02/2006	Cem Bastuji	PHDL0860-007	2393

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EXAMINER

PUROL, SARAH L

ART UNIT	PAPER NUMBER
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3637

NOTIFICATION DATE	DELIVERY MODE
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05/20/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@vclmlaw.com

Office Action Summary	Application No. 10/595,534	Applicant(s) BASTUJI ET AL.	
	Examiner Sarah Purol	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/6/09</u> . | 6) <input type="checkbox"/> Other: ____. |

Applicant has requested continuation of the examination of this application. To that effect, the claims have been amended in an attempt to overcome the rejections of the previous final rejection.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the relationship of the structures to the function is unclear. Likewise, in claim 3 the recitation "unused volumes" is unclear. In claim 4 there is no antecedent basis for "drawers". In general the elements and their relationship to one another which make up this invention are not clearly described with sufficient clarity and antecedent basis to enable one of ordinary skill in the art to make and use this invention. It is also unclear whether a restriction requirement between one or more inventions is appropriate in that the claim format is indefinite. It appears that applicant wishes to claim a basket for use with a dishwashing machine, therefore the claim that appears to be claim 8 would be appropriate for restriction to another invention which would include the combination of a dishwashing machine and a basket for use in a dishwashing machine.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a

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whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over AEG Hausgeraete EP1072221 A1. Hausgeraete teaches a basket 1 which is used in dishwashers and including a drawer 2 which slides on rails 3, 3'. The drawer is capable of holding utensils. Although the drawer 2 is positioned over the basket, there is no reason why the drawer could not be positioned underneath the basket as an alternative mechanical equivalent and a matter of design choice for one having ordinary skill in the art at the time of the invention.

In response to applicant's remarks and arguments:

The claims presented 1/21/11 do not overcome the 112 rejection by making the claims any clearer. The claims are still indefinite as to the structural relationship of the elements and their function. As pointed out above there is still insufficient antecedent basis for some of the elements claimed.

The examiner does not agree with applicants arguments regarding the prior art rejection. Applicant has argued what the references teach rather than the merits of the claims with respect to the teaching in the references.

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Although the applicant has amended the claims in an effort to present the claims in a more favorable light for purposes of allowance, the claims are still not considered to overcome the rejection under 35 USC or under 35 USC 103. The present device is not considered patentable in view of the Hausgeraete reference as described above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Purol whose telephone number is 571-272-6834. The examiner can normally be reached on Monday -Thursday during normal business hours. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell M. Jayne, can be reached on 571-272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Sarah Purol/

Primary Examiner

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